PENSION AND ANNUITY SUBTRACTION

REGULATION 39-22-104(4)(F).

- (1) Qualified Pension and Annuity Income. The following income may be excluded from Colorado taxable income to the extent a taxpayer is eligible for the pension/annuity subtraction:
 - (a) Pension and annuity income, IRA distributions, and social security income reported on the federal income tax return as taxable.
 - (b) A distribution reported as a "lump sum distribution addition" under §39-22-104(3)(c),
 C.R.S. in computing Colorado taxable income.
 - (c) Taxable disability retirement benefits received by persons 55 years of age or older, even if such payments are reported as wages for federal income tax purposes.
 - (d) Taxable nonqualified deferred compensation payments that qualify as retirement income under 4 USC Section 114(b)(1)(l) received by persons 55 years of age or older, even if such payments are reported as wages for federal income tax purposes.
- (2) Premature Distributions. Premature distributions for federal income tax purposes, regardless of the source, do not qualify for the pension/annuity subtraction.
- (3) Examples. The following are examples of payments that do not qualify as pension or annuity income for purposes of the Colorado pension/annuity subtraction:
 - (a) Sick leave and vacation leave payouts,
 - (b) Early retirement incentive payouts,
 - (c) Interest income from a bank plan that is distributed to a surviving spouse as retirement income upon death of first spouse,
 - (d) The portion of military pension awarded to a nonmilitary spouse as a result of a divorce settlement that is classified as alimony,
 - (e) Distributions from an otherwise qualified profit sharing plan to an employee prior to retirement.
 - (f) Distributions from an otherwise qualified employer sponsored savings plan or employee stock ownership plan prior to retirement,
 - (g) Lump-sum distributions from a qualified or nonqualified pension or profit-sharing plan as defined in section 401 of the Internal Revenue Code except to the extent such distributions are included in subparagraph (1)(b) of this regulation,
 - (h) Deferred payments received under personal service contracts.

(4) Trusts/Estates

(a) The pension/annuity subtraction is available to trusts and estates to the extent the amount is received as a result of the death of the person who earned the pension/annuity. The amount of the subtraction is the smaller of \$20,000 or the taxable pension/annuity income that is not distributed to the beneficiaries of the trust or estate.

(b) Each beneficiary who receives pension/annuity income distributed from the trust or estate will be eligible for a separate pension/annuity subtraction of up to \$20,000 if the amount is received as a result of the death of the person who earned the pension/annuity.

(5) Railroad Retirement Benefits.

- (a) Railroad retirement benefits (Tier I and Tier II) and disability payments are exempt from state taxation under Section 231m of the Railroad Retirement Act.
- (b) To the extent the benefits in paragraph (5)(a) above are included in federal taxable income, the benefits will be subtracted when computing Colorado taxable income as a "railroad retirement benefits subtraction." The income may not be subtracted a second time under the pension/annuity subtraction and the amount of any railroad retirement benefits subtraction will not count against the \$20,000 or \$24,000 limitation of the pension/annuity subtraction.